

**NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, April 5, 2012**  
**REGULAR MEETING**  
**6:30 p.m.**

**A. CALL TO ORDER** - The meeting was called to order at 6:44 p.m.

**B. PLEDGE OF ALLEGIANCE** – Led by Commissioner Tucker

**C. ROLL CALL**

PRESENT: Brown, Hillgren, Kramer, Myers, Toerge and Tucker

ABSENT: Ameri (arrived at 7:15 p.m.)

Staff Present: Kimberly Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; and Leonie Mulvihill, Assistant City Attorney

**D. PUBLIC COMMENTS**

Jim Mosher referenced written comments submitted regarding the recent Newport Banning Ranch portion of the Planning Commission meeting of March 22, 2012. He expressed concern that there was no hint on the notice or agenda that the Commission was contemplating votes on the EIR noting that the agenda implied the public hearing would be continued to April 5, 2012, and that all of those wishing to address the Commission were not given the opportunity. Mr. Mosher indicated that once the motions were made, no public comment was invited and felt that serious omissions were made. He recommended voiding the actions due to possible Brown Act violations and that a discussion of the propriety of previous votes on the Banning Ranch EIR is added to the next agenda and that a properly noticed and conducted hearing is scheduled.

Dan Purcell presented photographs of the Coast Business Center who recently received approval from the Zoning Administrator for additional building signage. He also presented photos of other buildings on East Coast Highway near Corona del Mar Plaza. He felt that the subject building is substantially exceeding the limit of signage and does not preserve the community appearance. He asked the Planning Commission to consider the issue.

Chair Toerge stated the comments from the public are duly noted and that if the Banning Ranch comment has any merit, the City Attorney would address it accordingly.

**E. REQUEST FOR CONTINUANCES**

Community Development Director Brandt reported there were no requests for continuances at this time.

**F. CONSENT ITEMS**

**ITEM NO. 1** Minutes of March 22, 2012

Chair Toerge noted there were comments circulated regarding the minutes.

**ACTION:** Approve and file.

**Motion** made by Vice Chair Hillgren to approve and file the minutes of March 22, 2012, as corrected.

Chair Toerge invited comments from the public.

Jim Mosher referenced the availability of a verbatim transcript of the March 22, 2012, meeting hoping that it would be available whether the issue was challenged in court or not. He stated that he found it disturbing that the hesitation of two (2) Commissioners regarding the item was not indicated relative to the ability of making a motion on the item at said meeting. He reiterated concerns over voting at that meeting rather than approving the recommended action of continuing the item until the meeting of April 5, 2012. He suggested correction of the minutes to indicate the Commission acted on

the advice of staff as follows, "Discussion followed regarding the propriety of voting on the EIR when the agenda indicated that the item would be continued to April 5th. Staff assured the Commission that such a vote had been properly agendized and recommended continuance to April 19th.

Chair Toerge stated the recommended continuance to April 19th was for the project, not the EIR.

Seeing and hearing no one else wishing to address the Commission, Chair Toerge closed the public hearing.

It was noted that the minutes were corrected according to the written comments submitted by Members of the Commission and that no further amendments were necessary.

The motion was seconded by Commissioner Brown and carried (5 - 0 - 1 - 1), with Commissioner Kramer, abstaining and Commissioner Ameri, absent.

AYES:	Brown, Hillgren, Myers, Toerge, and Tucker
NOES:	None.
ABSENT:	Ameri
ABSTAIN:	Kramer

## **G. PUBLIC HEARING ITEMS**

**ITEM NO. 2**                      Alternative Setback Determination (PA2012-015)  
   211 Orchid Avenue

Chair Toerge read the title to the aforementioned item, opened the public hearing, and called for a report from staff.

Assistant Planner Kay Sims presented details of the report addressing location, previous subdivision and reorientation, subsection to standard City setbacks and comparison to neighboring properties. She added that the application of standard setbacks results in a small buildable area and less total square footage than can be built on other properties. Ms. Sims noted that the application for an alternative setback determination is for the purpose of establishing more appropriate setbacks for the property and was continued by the Commission at its March 8th meeting so that staff could meet with the applicant and neighbors to develop additional setback proposals for the Commission to consider. She stated that at the previous meeting, the Commission expressed general support for setbacks that would result in a .95 Floor Area Ratio (FAR).

Ms. Sims reported that since that meeting, staff has met with the applicant's representative who submitted an alternative proposal and also met with neighboring property owners. She presented details of the applicant's alternative proposal noting it results in an FAR of .96 as well as three (3) alternative proposals developed by staff resulting in an FAR range between .87 and .92. She noted two (2) of the alternatives have staggered front and rear setbacks. Ms. Sims reported that staff also calculated three (3) other alternatives that resulted in an FAR range between .78 and .82, but did not include them in the staff report since they provide less buildable areas than staff's original recommendation resulting in an FAR of .85.

Chair Toerge invited the applicant or his representative to address the Commission.

Troy Davis, applicant representative, referenced previous discussions on this item including developing a possible variable setback across the front of the property. He stated that comments from the Commission were considered in developing alternatives and addressed compromises made in consideration of adjacent neighbors. He listed alternatives that would be acceptable to the applicant.

Interested parties were invited to address the Commission at this time.

Karl Drews, representing property owners of 3516 Ocean Boulevard, referenced a previous meeting with staff and neighbors and stated opposition to recommendation number 2. He addressed unique configuration of the lot upon its subdivision and challenges with obtaining a FAR that equals other properties in the area. Mr. Drews addressed the orientation of homes and pointed out that FAR is a guideline, not an ordinance, and should not dictate when there are negative impacts to adjacent properties. Mr. Drews stated support for developments that conform to existing ordinances and opposition to any setbacks that negatively impose on the property owners he represents.

Seeing and hearing no one else wishing to address the Commission, Chair Toerge closed the public hearing.

Discussion followed regarding clarification of acceptable alternative setbacks.

Commissioner Myers reported visiting the site and simulating views from adjacent properties. He suggested a slight modification of Exhibit 1, changing the rear setback to seven (7) feet which would result in an FAR of .91. He added the only difference to the applicant's proposed setback would be in a change to the front setback to a split of 46.5 feet and 46.5 feet.

Chair Toerge indicated that he visited the site and suggested a staggered setback and felt the proposal by the applicant is not sufficient, adding that the 20-foot setback should be maintained for at least half of the lot to maintain the integrity and views of adjacent neighbors. He added that to consider the FAR issue is not unfair, and it had been his hope that continuing the previous hearing, that the possibility of it being enhanced without negatively impacting the neighbors or opposition could be addressed. He agreed with Mr. Drews' statement regarding the FAR being a guide and stated support for Exhibit 1.

It was noted that the only benefit to the seven (7) foot setback is that it raises the FAR.

Commissioner Kramer felt that the issue is being complicated and indicated Exhibit 3 is the most simple, elegant, and reasonable alternative.

Commissioner Tucker stated agreement with Commissioner Kramer and addressed the proposal that the applicant would find acceptable. He indicated preference for accepting the applicant's recommendation or Exhibit 3.

Brief discussion followed regarding the orientation of the lot, setbacks, and compromises made by the applicant.

**Motion** by Commissioner Kramer and seconded by Commissioner Tucker to approve Exhibit 3.

**Substitute motion** by Chair Toerge and seconded by Vice Chair Hillgren and carried (4 - 2 - 1 - 0) with Commissioner Kramer and Commissioner Tucker, opposing and Commissioner Ameri, absent to approve Exhibit 1 with modification of the portion of the rear setback that was 10 feet to become a seven (7) foot rear setback as discussed and proposed by Commissioner Myers.

AYES:	Brown, Hillgren, Myers, and Toerge
NOES:	Kramer and Tucker
ABSENT:	Ameri
ABSTAIN:	None.

## **H. NEW BUSINESS**

### **I. STAFF AND COMMISSIONER ITEMS**

#### **ITEM NO. 3** Community Development Director's report.

Community Development Director Brandt reported that Council considered proposed changes to the Zoning Code related to fences, hedges and wall heights and accepted the Planning Commission's recommendations and will be going forward to a second reading. In addition, Council considered a General Plan amendment and rezone for the laundromat which will be going forward for a second reading.

#### **ITEM NO. 4** Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Chair Toerge addressed the Dry Dock Restaurant noting that it had restrictions in the conditions of approval prohibiting the restaurant from operating as a bar. He stated they have an annual review process and reported the name of the restaurant has been changed to Dive Bar. He suggested that if the City limits establishments of an operation from being a bar, it may want to consider limiting it from being called a bar.

Community Development Director Brandt indicated that is something that could be considered in conjunction with a Conditional Use Permit application in terms of appropriate conditions of approval that relate to the operation and how a business is signed in advertising. She added that normally, the City does not regulate copy for signs.

Chair Toerge referenced a property on the southwest corner of First Street and Carnation where there is a home under construction and requested that the project be reviewed by the Commission in terms of setbacks. He stated that it looks odd and felt that there have been mistakes regarding how the setbacks were calculated. He stressed the importance of avoiding what has occurred on that property in future developments.

He addressed the right of appeal the decision of the Zoning Administrator regarding signage noting that any of the Commissioners have that right. In addition, Chair Toerge stated that, it would be appropriate to schedule another review of rules and procedures relative to the Planning Commission. He encouraged Members of the Commission review them and provide input to staff.

Commissioner Kramer stated that he would like the opportunity for the Commission to discuss the issues expressed earlier by Mr. Purcell regarding the use of signage and asked staff to provide some background on the issue.

Community Development Director Brandt stated that staff is not in a position to provide a staff presentation on the Zoning Administrator approval at present since it is not in the agenda. The item would need to be placed in a future agenda. She noted a fourteen (14) day appeal period stating it expires that April 10, 2012. Should any Commissioner decide to review the issue, it would need to be called out and placed on the agenda.

Assistant City Attorney Mulvihill reported that there is a written requirement and reported that the Zoning Administrator's action and report is available on line for review and suggested Members review it and contact the appropriate staff member for the requirements which are mainly the basis for an appeal.

**ITEM NO. 5** Request for excused absences.

There were no requests for excused absences.

Commissioner Ameri arrived 7:15 p.m.

**ADJOURNMENT**

There being no further business to come before the Planning Commission, Chair Toerge adjourned the meeting at 7:16 p.m.

The agenda for the Regular Meeting was posted on March 30, 2012, at 9:10 a.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

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Michael Toerge, Chairman

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Ex-Officio Secretary